

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Small Power)	Docket No.
Plant Exemption, Modesto)	03-SPPE-01
Irrigation District for the)	
Modesto Electric Generation)	
Station Project (MEGS))	
_____)	

MODESTO IRRIGATION DISTRICT HEADQUARTERS

BOARD ROOM

1231 11TH STREET

MODESTO, CALIFORNIA

TUESDAY, DECEMBER 2, 2003

2:25 P.M.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James Boyd, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Stanley Valkosky, Hearing Officer

Michael Smith, Advisor

STAFF AND CONSULTANTS PRESENT

William Westerfield, Staff Counsel

James Reede, Project Manager

PUBLIC ADVISER

Mike Monasmith, Assistant Public Adviser

APPLICANT

Joy A. Warren, Staff Attorney

Steve Hill, Project Manager

Greg Salyer

Modesto Irrigation District

Susan Strachan

Strachan Consulting

Gary Rubenstein

Sierra Research

INTERVENORS

Robert Sarvey

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	2
Overview and Procedure	3
Hearing Officer Valkosky	3
Condition Changes	5
Noise	5
Cultural	7,12
General Conditions of Exemption	8
Visual	12
Energy Resources	15
Applicant	15,41
CEC Staff	22
Intervenor Sarvey	38
Motion to Reopen Record	48
Schedule	55
Closing Remarks	56
Adjournment	56
Reporter's Certificate	57

P R O C E E D I N G S

2:25 p.m.

PRESIDING MEMBER BOYD: Well, good afternoon, everybody, and welcome to this Energy Commission Committee hearing on the proposed decision and mitigated negative declaration for the Modesto Electric Generation Station. Sorry to have been a little late, but then I understand, found out the attorneys were running over time anyway.

Commissioner Pernell, who, when I left him to leave today, was literally on his way, is not coming. So, things are still always exciting in the energy business. Something in Sacramento that caused him to have to literally almost turn around and go back. So we'll proceed without him. I, as Chair of this Committee, anyway, at least am here. And Commissioner Pernell, I know, will look at the record of this hearing as we occasionally have to do when we're called away from these kinds of hearings.

I would like to have introductions of the applicant, staff and intervenors. And then I'm going to turn the hearing over to Mr. Valkosky to finish up today. So, applicant, would you like

1 to introduce your --

2 MS. WARREN: Thank you. I'm Joy
3 Warren; I'm the attorney for the applicant. Steve
4 Hill is the Project Manager for the project; and
5 Susan Strachan is here with us, also. We have a
6 number of others that, when they arrive, I will
7 introduce them.

8 PRESIDING MEMBER BOYD: Thank you.
9 Staff.

10 MR. WESTERFIELD: William Westerfield,
11 Staff Counsel. And to my right is Dr. James Reede
12 who is the Project Manager.

13 PRESIDING MEMBER BOYD: Mr. Sarvey,
14 would you like to introduce yourself.

15 MR. SARVEY: Bob Sarvey.

16 PRESIDING MEMBER BOYD: And our Public
17 Adviser's Office is represented by a brand new
18 employee who can introduce himself.

19 MR. MONASMITH: I'm Mike Monasmith, with
20 the Public Adviser's Office. As you probably all
21 know, the Public Adviser's Office is here to help
22 facilitate full participation in this process.

23 I do have some blue cards I'll pass out
24 to those who might have questions later for the
25 Chairman. I believe that's all I have.

1 PRESIDING MEMBER BOYD: If anybody wants
2 to testify, ask him to give you a blue card. You,
3 in turn, have to get it up to here, so we'll call
4 on you.

5 With that, Mr. Valkosky, I'm going to
6 turn this over to you so the audience doesn't see
7 me grimacing up here all the time. I have really
8 thrown my back out here a few days ago, so I
9 brought my own back cushion.

10 Anyway, go for it.

11 HEARING OFFICER VALKOSKY: Thank you,
12 Commissioner Boyd. The Committee issued its
13 proposed decision and mitigated negative
14 declaration and notice of today's conference on
15 November 7th of this year.

16 The comment period on this document
17 officially ends next week on December 8th. The
18 Committee, however, directed the parties to file
19 written comments by November 25th. The applicant
20 and the staff did so.

21 The purpose of today's conference is not
22 to receive evidence but rather to hear from the
23 parties and the public concerning the contents of
24 the Committee document.

25 I'd like to preface presentations with

1 the advice that it is not necessary for the
2 parties to repeat all matters contained in the
3 written comments, since the Committee has reviewed
4 them.

5 Furthermore, the parties may assume that
6 the Committee will incorporate the appropriate
7 editorial comments pointed out by the parties.
8 Therefore, the parties should focus only on the
9 major points in the changes to the conditions
10 suggested by staff and applicant.

11 Following today's conference the
12 Committee may issue an errata to the proposed
13 decision.

14 Basically the way the Committee views it
15 is there are essentially two issues. There's the
16 5000 hour issue and then there are minor points
17 concerning changes to several of the conditions,
18 principally visual and a noise change suggested by
19 applicant.

20 In reviewing this I think it may be more
21 efficient to proceed with the latter first; get
22 the editorial and the condition changes out of the
23 way. And then go to what will largely be the meat
24 of today's proceeding. Do the parties have any
25 comments on that?

1 Ms. Warren?

2 MS. WARREN: No, I think that sounds
3 great.

4 MR. WESTERFIELD: Well, Dr. Reede, I
5 think, might address the questions of changes to
6 the visual conditions, as well as the noise
7 condition.

8 HEARING OFFICER VALKOSKY: Okay. What
9 I'm saying is we'll proceed with that first and
10 then we'll go to the 5000 hour issue.

11 MR. WESTERFIELD: Yes, that's fine.

12 HEARING OFFICER VALKOSKY: Okay. Mr.
13 Sarvey, would you be amenable to that?

14 MR. SARVEY: No problem, great.

15 HEARING OFFICER VALKOSKY: Okay. All
16 right, starting with that, Ms. Warren, applicant
17 suggested a single change to one of the noise
18 conditions, is that correct?

19 MS. WARREN: Yes. We suggested a change
20 to noise-1; it was a clarification to establish
21 the location and method of measuring for pure
22 tones. We don't have any concerns with the
23 condition of exemption, itself, but would like to
24 clarify the methodology so that we can insure the
25 most effective results from the measurements.

1 HEARING OFFICER VALKOSKY: Staff, do you
2 have any problem with that proposed change?

3 MR. WESTERFIELD: No problem. It's
4 agreeable.

5 HEARING OFFICER VALKOSKY: Mr. Sarvey?

6 MR. SARVEY: None.

7 HEARING OFFICER VALKOSKY: All right. I
8 think it's pretty safe to assume that that change
9 will be incorporated.

10 Ms. Warren, did applicant have any
11 further changes to conditions?

12 MS. WARREN: We understand that staff
13 has some clarifications and if we could defer, I
14 think that staff is going to take care of our
15 other issues.

16 HEARING OFFICER VALKOSKY: Okay. Mr.
17 Westerfield.

18 MR. WESTERFIELD: I have to say, Ms.
19 Warren, which clarification are you referring to?

20 MS. WARREN: I believe we're talking
21 about visual-1, is that right -- and just
22 clarification on the general condition -- oh, it's
23 cultural-2? Okay.

24 MR. WESTERFIELD: Well, fine. I was
25 interpreting Mr. Valkosky's comments in general to

1 be there are a number of relatively minor errata
2 type comments that we propose to the PMPD, and I'm
3 not sure that you are really interested in us
4 addressing those.

5 HEARING OFFICER VALKOSKY: No, I'm
6 really not, not, for example, the air quality ones
7 I view as editorial.

8 MR. WESTERFIELD: Right.

9 MS. WARREN: Okay.

10 HEARING OFFICER VALKOSKY: As are the
11 biological resources, hazardous materials. So
12 I --

13 MS. WARREN: To be more specific we were
14 looking at -- I'm looking right now at staff's
15 comments submitted on November 25th. On cultural-
16 2 they've added language in the verification. We
17 have no problem with the language that was added,
18 but we believe that in the comments it adds it at
19 the wrong location. The comments indicate that it
20 would add the language at the end of the
21 verification paragraph. We believe, rather, that
22 that should be added at the end of the first
23 sentence. So that was a clarification --

24 HEARING OFFICER VALKOSKY: Yeah, I --

25 MS. WARREN: -- and that's not in the

1 comments. That would be something new.

2 HEARING OFFICER VALKOSKY: -- I think
3 that's correct. Do you have any problem with
4 that?

5 MR. WESTERFIELD: No problem with that.

6 HEARING OFFICER VALKOSKY: No. Okay.

7 MS. WARREN: The other clarification I
8 think I'll defer to Susan. This is more, again,
9 an editorial one, but it's one that's not
10 reflected in the comments.

11 Staff's comments on general conditions
12 of exemption refer to changes of a 1 and 2, and I
13 think those need to just be clarified a bit. And
14 I'm going to defer to Susan to indicate that
15 clarification.

16 MS. STRACHAN: Thank you. This is just
17 a minor clarification. The 1 and 2 that are
18 specified under general conditions of exemption,
19 the one change is really on item 1, and it goes
20 to, on page 45, where the monthly compliance
21 report is talked about, that the item 2 is
22 specified as already correct as it's written in
23 the PMPD.

24 MR. WESTERFIELD: I think, as I
25 understand it, you're saying that our comments for

1 1 and 2 would actually apply to the 1 and 2 -- the
2 first of the two 1 and 2s listed on page 45.

3 MS. STRACHAN: Correct, and --

4 MR. WESTERFIELD: That's right.

5 MS. STRACHAN: -- just for clarification
6 that the number 2 in the comments is actually
7 fine. It reads the same as it does in the PMPD
8 right now. So that's all. It's just minor stuff.

9 MR. WESTERFIELD: I see that as
10 basically editorial.

11 MS. STRACHAN: Yeah.

12 HEARING OFFICER VALKOSKY: All right.
13 While we're on and we're addressing the general
14 conditions of exemption, on pages -- a change is
15 suggested to pages 44 and 45. And I'd like to
16 focus on page 45, under the paragraph, annual
17 reports.

18 MR. WESTERFIELD: Um-hum.

19 HEARING OFFICER VALKOSKY: Those are the
20 paragraphs 1 and 2 to which you're referring and
21 to which you suggest year to month, and annual to
22 monthly, is that correct?

23 DR. REEDE: Mr. Valkosky, James Reede,
24 California Energy Commission. The paragraphs that
25 are referred to in staff's comments, we're asking

1 that those paragraph be moved up above annual
2 reports into construction monthly reports.

3 HEARING OFFICER VALKOSKY: Right, on
4 page 44, correct?

5 DR. REEDE: Well, 44 continues into 45,
6 construction monthly reports.

7 HEARING OFFICER VALKOSKY: Okay.

8 DR. REEDE: So they would be replicated
9 above where the header says annual reports.

10 HEARING OFFICER VALKOSKY: Okay.

11 DR. REEDE: And they would be changed to
12 reflect month or monthly.

13 HEARING OFFICER VALKOSKY: Okay. And
14 would you also move the sentence preceding that,
15 "The report shall contain at the minimum:"?

16 DR. REEDE: No, we're not going to
17 replace "The report shall contain at a minimum:"
18 We're just going to replace items 1 and 2 with the
19 new language.

20 HEARING OFFICER VALKOSKY: Right. What
21 I'm saying -- I think we're getting confused here.
22 In annual reports --

23 DR. REEDE: Annual reports would stay --

24 HEARING OFFICER VALKOSKY: Okay.

25 DR. REEDE: -- the same as it is.

1 HEARING OFFICER VALKOSKY: Okay. Annual
2 reports, the last sentence in that paragraph says
3 "The report shall contain at a minimum:" It then
4 goes into items 1 and 2.

5 DR. REEDE: Correct.

6 HEARING OFFICER VALKOSKY: What I'm
7 asking is, I take it you'll delete that sentence,
8 "The report shall contain at a minimum:" because
9 if we move those two above it, there will be
10 nothing it refers to.

11 DR. REEDE: No, I'm saying copy those
12 two above it, not remove.

13 HEARING OFFICER VALKOSKY: Again, I
14 think it's a communication difficulty. And just
15 focus on annual reports, the paragraph under that,
16 okay?

17 DR. REEDE: Okay.

18 HEARING OFFICER VALKOSKY: The last
19 sentence in that paragraph, okay?

20 DR. REEDE: Um-hum.

21 HEARING OFFICER VALKOSKY: You see that
22 sentence says, "The report shall contain at a
23 minimum:"?

24 DR. REEDE: Yes.

25 HEARING OFFICER VALKOSKY: Okay. Do you

1 want that sentence in there after you move, you
2 replicate those above?

3 DR. REEDE: Yes.

4 HEARING OFFICER VALKOSKY: Then what
5 will follow the colon?

6 DR. REEDE: What will follow the colon
7 are paragraphs 1 and 2. Bullets -- or numbers 1
8 and 2. Annual reports does not change.
9 Construction monthly reports changes.

10 We're leaving them there; we're
11 replicating and modifying them to read into
12 construction monthly reports.

13 HEARING OFFICER VALKOSKY: Okay, thank
14 you. That was my confusion; I appreciate your
15 clarifying it.

16 DR. REEDE: Thank you very much.

17 HEARING OFFICER VALKOSKY: And going to
18 page 34, on condition cultural 3, the phrase that
19 you're deleting, including landscaping, is in the
20 verification as a condition, is that correct?

21 DR. REEDE: Yes.

22 HEARING OFFICER VALKOSKY: Okay. Ms.
23 Warren, does the applicant have any difficulty
24 with staff's proposal for visual-1?

25 MS. WARREN: No, we don't have a problem

1 with that.

2 HEARING OFFICER VALKOSKY: Mr.
3 Westerfield, do you have any other suggested
4 changes?

5 MR. WESTERFIELD: No, none other than
6 the ones we've listed in our comments.

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. WESTERFIELD: Apart, of course, from
9 energy resources.

10 HEARING OFFICER VALKOSKY: Right, yeah,
11 that's excluded.

12 Mr. Sarvey, do you have any comments on
13 the changes proposed by applicant and by staff?

14 MR. SARVEY: I'm pretty satisfied with
15 the whole decision as it stands.

16 HEARING OFFICER VALKOSKY: Okay. Well,
17 with that, and again I apologize for my confusion,
18 on the reporting requirements. But I believe
19 those would be incorporated into the final
20 version.

21 Given that, unless there's anything else
22 from anyone we'll proceed with the energy
23 resources concerns.

24 MR. SARVEY: Could I bring up just one
25 matter?

1 HEARING OFFICER VALKOSKY: Certainly.

2 MR. SARVEY: The decision -- this is
3 just minor because the Energy Commission won't be
4 regulating this anyway, but the decision states on
5 page 14 that the Air District confirmed that the
6 SCONox technology was not technically feasible for
7 this project. And if you review the transcript on
8 page 379 and 385 that's not exactly what was said.

9 And I would also point out that on
10 exhibit 37 it also says SCONox is feasible. And
11 also in the preliminary decision on this project,
12 itself, from the Air Pollution Control District,
13 it also says SCONox is feasible.

14 So that's the only part of the decision
15 that I have any disagreement with, and probably a
16 first time the intervenor backed the decision and
17 the staff and applicant had problems with it, so
18 set a little precedent here.

19 That's the only item that I have.

20 HEARING OFFICER VALKOSKY: Okay, Mr.
21 Sarvey. The Committee will review that portion of
22 the transcript, and if it believes changes are
23 appropriate we'll incorporate.

24 MR. SARVEY: Thank you.

25 HEARING OFFICER VALKOSKY: Anything

1 further? Ms. Warren.

2 MS. WARREN: Are we ready for energy
3 resources?

4 HEARING OFFICER VALKOSKY: We're ready
5 for energy resources.

6 MS. WARREN: Thank you. Applicant
7 indicated in its comments, and we won't reiterate
8 the comments that we submitted, but would like to
9 just briefly summarize our initial position on
10 this issue.

11 We obviously don't agree that the energy
12 resources condition of exemption is necessary. We
13 believe that the evidence is sufficient to support
14 a conclusion that the project will not have a
15 significant impact on energy resources.

16 The evidence on the record is clear and
17 there's no disagreement over the District's need
18 for simple cycle capability. It's also clear in
19 the record, I don't think there's any
20 disagreement, regarding the District's need for
21 operational flexibility. And that the simple
22 cycle facilities that are proposed in this project
23 are, in fact, suitable to meet the District's
24 needs.

25 This is a plant that will be built; will

1 serve the power system. The District has looked
2 at the issue carefully and has invested a large
3 amount of money, over \$1 million, \$1.5 million, to
4 secure the necessary air credits in order to seek
5 the permitting to allow the flexibility that it
6 requires.

7 The question I think before us, as
8 presented in the proposed decision, is simply
9 whether there's sufficient evidence in the record
10 to support a finding that operation of the MEGS
11 facility for 8760 hours a year will not have a
12 significant impact.

13 We believe, as we mentioned in the
14 comments, I think, it is worth reiterating here,
15 that there's been no issue that evidence presented
16 shows that there would be an impact. So it's not
17 a question here of whether there's substantial
18 evidence to support a fair argument. There is no
19 fair argument that there would be an impact.

20 We believe that the evidence has been
21 presented in the record; that based on the needs
22 that the simple cycle will efficiently meet those
23 needs and provide the capabilities that the
24 District needs.

25 That we have presented similar

1 facilities located in the Central Valley area that
2 have undergone review based on the same criteria
3 that are, in fact, equally or less efficient than
4 the proposed MEGS facilities.

5 And after thorough review of those
6 projects, it was determined that those simple
7 cycle projects would not have an impact on energy
8 resources. And we believe that that also is an
9 indication that can be referenced here.

10 In addition, staff has provided
11 additional analysis in its comments that were
12 filed on November 25th that removes any ambiguity
13 in the record and clearly concludes that the
14 proposed MEGS operation will not have an impact on
15 energy resources.

16 If needed, the District is open to
17 reopening this particular topic for the limited
18 purposes of adding evidence that the Committee may
19 deem helpful in this matter. But, again, we
20 believe that the record does adequately support
21 the conclusion that there would be no impact to
22 energy resources under the proposed flexible
23 operating hours of 8760 per year.

24 HEARING OFFICER VALKOSKY: Just before
25 we get to staff, just a couple quick questions.

1 Are you suggesting that the other cases are in
2 some way precedential? I think you referred to
3 Henrietta and Tracy in your comments.

4 MS. WARREN: We believe that the other
5 cases, because the plant configurations are
6 similar, the locations are similar, the time
7 period is fairly close, and that the analysis
8 performed, the criteria used are the same. And
9 therefore, they, while I don't know if
10 precedential would be the right word, I do believe
11 that they are, the conclusions drawn when looking
12 at the criteria for those plants being the same as
13 for this plant, would be analogous and could be
14 considered.

15 HEARING OFFICER VALKOSKY: So could I
16 view that as you would urge that on the basis of
17 some consistency value rather than a requirement
18 of precedentiality?

19 MS. WARREN: I believe that's accurate.

20 HEARING OFFICER VALKOSKY: Okay. Last
21 question. At present you indicate that there's no
22 evidence that the project would cause an impact.
23 This gets us into a burden of proof problem
24 eventually because it is the Committee's view that
25 the applicant has the burden of proof going

1 forward.

2 So I guess what the Committee is looking
3 at, is there any evidence affirmatively
4 establishing that operation of 8760 a year would
5 not create an adverse impact upon energy
6 resources?

7 MS. WARREN: Again, we would point to
8 staff's comments filed recently on the decision as
9 being the most clear statement. I think we also
10 have in the evidentiary hearing portion of the
11 record that the staff's errata indicates that
12 whether it's baseload or peaking operation, that
13 the plant will be official. And that their
14 conclusion in the errata was that there would be
15 no impact.

16 You know, again, if need be, the
17 District would propose reopening the evidence on
18 this particular narrow issue if the Committee
19 needed additional satisfaction.

20 HEARING OFFICER VALKOSKY: Okay, we'll
21 get to that next. You refer to the staff errata.
22 Was that what we have come to know and love as
23 exhibit 26?

24 MS. WARREN: I believe that would be it.

25 HEARING OFFICER VALKOSKY: Okay. If I

1 could locate my copy of it.

2 (Pause.)

3 MS. WARREN: I have an extra copy if you
4 need --

5 HEARING OFFICER VALKOSKY: That would be
6 great. The filing system has let me down.

7 (Pause.)

8 HEARING OFFICER VALKOSKY: Okay. And I
9 guess, I see the conclusion, Ms. Warren, but in
10 the analysis it says, quote, "Since the MEGS will
11 be required to provide peaking power most of the
12 time and will only be required to run on baseload
13 for a short time every year," and then it
14 continues.

15 And above that, the first sentence is:
16 As proposed the MEGS would generate power as a
17 peaking plant except for three months every year
18 in which it would generate baseload power.

19 I mean, based on that, it frankly seems
20 to the Committee that the analysis is performed as
21 a peaker with three months of baseload operation.
22 I guess I fail to see how that supports operation
23 for 8760 a year.

24 MS. WARREN: And understanding the
25 ambiguity as raised, the applicant had pointed to

1 Henrietta and Tracy as ways to address that
2 ambiguity and again, the ambiguity has been
3 addressed specifically by staff in comments here
4 to clarify.

5 HEARING OFFICER VALKOSKY: Okay, and I
6 just want to make sure I fully understand
7 everything. All right, the last point before we
8 turn to Mr. Westerfield. You mentioned reopening.
9 When would you suggest this be done and what would
10 be the extent?

11 MS. WARREN: Well, again, obviously our
12 preference would be that if need be it could be
13 done today at this hearing, that all parties are
14 present and notices be given. And the comments
15 have been distributed that raise this issue.

16 But, if it -- as to the degree I think
17 it should be very narrowly to address this
18 particular question of resolving the ambiguity of
19 whether there would be clear evidence to present
20 regarding operation of the plant at 8750 hours per
21 year.

22 HEARING OFFICER VALKOSKY: Okay, so
23 basically you're saying reopen it today or within
24 ten days from today, is what it would come down
25 to?

1 MS. WARREN: As quickly as could be
2 done, yes.

3 HEARING OFFICER VALKOSKY: With our
4 noticing. Okay, thanks.

5 Mr. Westerfield.

6 MR. WESTERFIELD: Thank you, Mr.
7 Valkosky. I think obviously from our comments the
8 Committee is aware that we have asked that this
9 condition inserted by the Committee be dropped,
10 and that there be no limitation on the operating
11 hours of the proposed plant.

12 And basically I'd like to reach back or
13 start back from what the Committee reasoned and
14 hopefully add a little bit more insight to, I
15 think, illustrate that it's not -- that there's
16 more to be considered.

17 I think the Committee was correct in
18 asserting that an inefficient wasteful or
19 unnecessary consumption of energy may be
20 considered a significant impact under CEQA. And
21 from this the Committee reasoned that since simple
22 cycle operates less efficiently in baseload than a
23 combined cycle, there may be a significant impact
24 if MEGS facility operates in a baseload
25 configuration or mode for more than 2200 hours a

1 year.

2 However, I think this reasoning fails to
3 take into account all the project objectives. In
4 other words, a potential -- a temporary
5 inefficiency to meet one project objective doesn't
6 mean that a simple cycle plant will cause
7 inefficient, wasteful or unnecessary consumption
8 of energy overall.

9 To the contrary, a combined cycle plant
10 would be the one that would be inefficient,
11 wasteful and cause an unnecessary consumption of
12 energy.

13 There are a number of project objectives
14 here, as the Committee pointed out in its proposed
15 decision. One objective is for load following;
16 another objective is to provide ancillary
17 services, both admittedly peaking responsibilities
18 or peaking functions.

19 But in addition to that there are other
20 project objectives which are to provide generation
21 to meet MID's native load; to provide additional
22 generation to meet grid stability or to respond to
23 ISO instructions; and also to facilitate the load
24 growth within the MID service area.

25 Which single plant design is most

1 efficient and least wasteful to meet all these
2 objectives in terms of energy resources. And we
3 believe the record is uncontroverted that the only
4 design that does that is the simple cycle design.

5 So, our first point is that this design,
6 as proposed by MID, is the most efficient power
7 plant for energy resources purposes taking all of
8 the project objectives into account.

9 But there are several other points, as
10 well. Secondly, we think it's a very powerful
11 factor to consider that's in the record that
12 economic incentives, that there are substantial
13 economic incentives not to operate this plant in a
14 baseload mode.

15 The first is that natural gas is
16 expensive. And that means plants that burn natural
17 gas more cheaply will sell baseload power before
18 plants that burn natural gas, or it's more
19 expensive to burn natural gas.

20 And that, as the record shows in many
21 respects, will be a very power disincentive for
22 this plant to operate for the, I guess, concerned
23 period of time which is 24/7, 365 days a year. I
24 think the record is full of evidence to powerfully
25 indicate, substantial evidence to carry the burden

1 of proof that this will not happen. Because there
2 are so many other objectives, there are so many
3 other economic factors that will dissuade MID from
4 doing this. So I believe that's a very important
5 point that I would remind the Committee of.

6 Also, MID is a utility. And as a
7 utility it has special responsibilities to balance
8 their own load, unlike a merchant plant. So if
9 extraordinary events happen that could cause this
10 facility to operate extra hours early in a year,
11 then that would limit their ability to balance
12 their own load later in the year.

13 And I believe our comments pointed out
14 to various information in the record as to what
15 kinds of extraordinary events could possibly
16 happen. Certainly transmission line outages;
17 generating plants being down; that kind of thing.

18 And as the Committee well knows,
19 probably better than any of us, the California
20 electricity grid is full of unexpected problems
21 and contingencies, things that no one can foresee.
22 And to impose a 5000 hour limit on a utility for
23 30 years into the future would be, I think,
24 counter productive to their meeting their own
25 responsibilities as a utility.

1 I think similarly these kinds of
2 extraordinary events that might cause the project
3 to run early in the year could impair MID's
4 ability to respond to the CalISO with both real
5 power and with ancillary services if called upon
6 by the ISO. We know that MID has plans to
7 hopefully become its own service -- not a service
8 territory, but its control area, thank you. And
9 this is part of that process.

10 But it continues to be under ISO
11 control. And it's one of the functions, one of
12 the objectives of this project is to respond to
13 the ISO when the ISO needs it. And if it is
14 burdened with a 5000 hour limit, regardless of
15 what may happen in the future, this could be a
16 threat to grid stability and fulfilling the needs
17 of the ISO years into the future under
18 circumstances we can't now foresee.

19 I would also remind the Committee that
20 the calculation of 5000 hours did not take into
21 account load growth, which there's information in
22 the record to indicate there will be load growth
23 in this district. That is one of the project
24 objectives.

25 And so this, using a peaker instead of,

1 I guess, trying to start by building a combined
2 cycle plant, affords MID a little more
3 flexibility, a little more time to meet its
4 projected load growth in an efficient, cost
5 effective way, rather than possibly by limiting
6 its operating hours incentive to build a combined
7 cycle plant now when the demand is not there.

8 So, I would remind the Committee that
9 load growth is something it did not take into
10 account in calculating the hours.

11 And then as, I guess, a final point, I
12 am somewhat concerned that allocating 2200 hours
13 is a bit of a guess by the Committee. At what
14 point a simple cycle plant may become inefficient,
15 wasteful or unnecessarily use energy resources.

16 The judgments of when a combined cycle
17 plant is superior or more efficient to a simple
18 cycle plant I think can only be made in real time,
19 after the assessment of the economics of the
20 situation at that point in time. And how can we
21 foresee now in 2003 what the economics will be as
22 between a combined cycle and a simple cycle plant
23 in 2008, in 2015, in 2025? Will the simple cycle
24 be inefficient in 2015 in its 2000th hour, in its
25 2500th hour of operation for the year of a

1 baseload operation?

2 Now, does the Committee have the
3 information in the record to draw that line now?
4 Staff is concerned that it does not, and that an
5 attempt to draw the line as it has done could be
6 viewed in hindsight as an arbitrary line.

7 So, I think in summary our position is
8 that we'd ask the Committee not to be overly
9 focused on whether at a particular point in time
10 it seems that a combined cycle might be more
11 efficient than running a simple cycle. But that
12 it should take into account the needs of the
13 project in toto, the needs to fulfill all these
14 different objectives. So that perhaps at 4:00
15 p.m. on a summer afternoon it might seem that a
16 combined cycle is more efficient; and maybe by
17 8:00 p.m. it would not be. Maybe two months later
18 at 4:00 p.m. it would not be.

19 And so it is that entire picture of how
20 this plant might use energy resources that I think
21 CEQA meant when it said that, you know, you must
22 consider in the environmental analysis whether the
23 use of energy resources is inefficient,
24 unnecessary, wasteful.

25 So, that's our position.

1 HEARING OFFICER VALKOSKY: Okay, a
2 couple of questions, I guess, even observations.
3 The economic factors you brought up were
4 discussed, I believe pages 17 to 18 of the
5 decision. And the Committee's observation was
6 that it seemed to be a lot of effort justifying an
7 option which supposedly wouldn't be used. So, I
8 mean it's --

9 Second, no one disagrees that a simple
10 cycle best meets project objectives. The decision
11 states that explicitly on page 16.

12 Third, the basis for the 5000 hours is
13 frankly the best that the record appears to offer.
14 At least at 5000 hours the mathematics going into
15 it is fully explained and very competently
16 explained. Frankly, were it not for that part of
17 the record I'm not sure what the result would have
18 been.

19 Lastly, one of your comments you
20 indicated that if you want to run a peaker at 4:00
21 or turn it off at 8:00, are you implying that
22 there is something in the decision that dictates
23 when the plant may be operated? As opposed to
24 saying, here's 5000 hours, spend them whichever
25 way you'd like.

1 MR. WESTERFIELD: No, no, we don't --

2 HEARING OFFICER VALKOSKY: Okay.

3 MR. WESTERFIELD: -- we don't interpret
4 the decision as prescribing in any way what time
5 of day the plant needs to be run.

6 HEARING OFFICER VALKOSKY: Okay. All
7 right. As long as we're clear on that.

8 MR. WESTERFIELD: But I --

9 HEARING OFFICER VALKOSKY: Are you also
10 saying that the project objectives could not be
11 met at least in some partial degree by limiting
12 operation to 5000 hours per year?

13 MR. WESTERFIELD: It could be, frankly,
14 that certain project objectives could not be met
15 at all with this kind of limitation because --

16 HEARING OFFICER VALKOSKY: And is there
17 evidence in the record indicating that? Or at
18 what point?

19 MR. WESTERFIELD: Well, I think the
20 difficulty that we have here is attempting now to
21 mitigate an uncertainty.

22 HEARING OFFICER VALKOSKY: On behalf of
23 the Committee I agree with that. That's what got
24 us to this point in the first place. I mean, you
25 know, Mr. Westerfield, you pose in your argument

1 basically the question -- I'm paraphrasing -- at
2 what point would a simple cycle plant become
3 wasteful or inefficient, and frankly, that's
4 directly related to the question the Committee is
5 asking.

6 I mean, the state of the record, and
7 again I'll paraphrase but not paraphrase
8 liberally, from the testimony that was given.
9 Okay. "The analysis, the analysis of record, was
10 it for the 8760 that the plant is talking about
11 running?" This is page 120 of the transcript.
12 The answer, "No, sir, it was based on a peaker
13 plant which may operate baseload up to three
14 months a year, which is quite a bit less than
15 8760."

16 Continues on: "We've only analyzed the
17 project that we understood was being presented."
18 "If the project" -- and this is from page 119 --
19 'If the project were proposed as a baseload, to
20 run all year round as a baseload, then we would
21 need to revisit it and reanalyze it. And it's
22 possible that we'd reach a different conclusion."

23 The point here is not -- I think we're
24 all agreed on MID's demand, their need and
25 objectives. The point is the status of the

1 evidentiary record. And from the inspection of
2 the record, unless you want to draw some very
3 broad inferences, the analysis contains, basically
4 the initial study analysis says, analyzed as a
5 peaker the project will not cause a wasteful or
6 inefficient use of energy resources.

7 The second part of the analysis, when
8 analyzed as proposed, i.e., as a peaker running
9 three months baseload, the project will not create
10 an adverse impact upon energy resources.

11 There is no direct evidence that if it
12 operated at 8760 in order to preserve some of
13 these somewhat speculative -- or meet some of
14 these somewhat speculative needs you mention, what
15 would be the effect on energy resources.

16 I mean that's the fundamental problem
17 that the Committee sees. You know, coupling that
18 with, you know, how do we define a peaker, well,
19 you know, we can look at exhibit 1, section 9 of
20 applicant's submittal where the inference is a
21 peaker is something that doesn't run more than
22 3000 hours per year.

23 So, I mean that's the state we've got.

24 MR. WESTERFIELD: I understand.

25 HEARING OFFICER VALKOSKY: Do you have

1 any response?

2 MR. WESTERFIELD: I do have a response.

3 HEARING OFFICER VALKOSKY: Okay, please.

4 MR. WESTERFIELD: I believe the record
5 does include statements by staff that when staff
6 has analyzed this project as proposed, which
7 includes all of the objectives that I mentioned
8 previously, it does not create a significant
9 impact on energy resources.

10 And those objectives, and those
11 functions include operating in a baseload capacity
12 during canning season. But also for these other
13 instances that I mentioned previously, which is if
14 there are emergency situations in which generation
15 needs to be supplemented, perhaps in a baseload
16 capacity; if the ISO calls upon this utility in
17 order to provide supplemental power to the
18 California grid, perhaps in that capacity;
19 including also the capacity of load growth.

20 And so that is included in our opinion
21 in the record that there is no inefficient use of
22 energy resources.

23 HEARING OFFICER VALKOSKY: Okay. I'm
24 quoting from pages 118 and 119: "The energy
25 resources testimony and supplemental testimony was

1 based on our staff's understanding of the proposed
2 project, which is to run peaking most of the year,
3 and run effectively baseload for up to three
4 months of the year." That's what it says.

5 I mean, you know, you're suggesting
6 things which, you know, for the life of me I can't
7 find in the record.

8 MR. WESTERFIELD: Well, we would be
9 happy to take a look at the record at another
10 time. It's very difficult for me to go through
11 the record at the moment --

12 HEARING OFFICER VALKOSKY: No, I
13 understand, I understand --

14 MR. WESTERFIELD: -- and get that
15 information to you right now. You certainly have
16 pointed to one point in the record where we have
17 said what our analysis was, but I said my point is
18 implicit in the record also, not explicit in the
19 record, was our statement that it is not an
20 inefficient use of energy resources in order to
21 meet those other responsibilities. And those
22 other responsibilities certainly could result in
23 the plant running for more than 2200 hours in a
24 baseload capacity.

25 The difficulty -- I'd also like to add

1 one other thing, Mr. Valkosky, which is it is very
2 difficult, I think, for staff, sitting today, to
3 try to analyze the energy profile of a plant under
4 various contingencies, various emergency
5 situations in the distant future that may cause
6 this plant to run more than 5000 hours.

7 If we were to sit down and say, well, I
8 think we'll run any number of regression analyses
9 or any number of analyses and we'll decide, well,
10 at 5100 hours a year it's the most efficient
11 plant; at 5400 hours a year it's the most
12 efficient plant; however, but at 5700 hours a year
13 it all of a sudden becomes inefficient use of
14 energy resources. They should have a combined
15 cycle facility.

16 But under different circumstances, at
17 6100 hours perhaps it is more efficient again;
18 6600 hours --

19 HEARING OFFICER VALKOSKY: Mr.
20 Westerfield, who's suggesting that that would have
21 to be done?

22 MR. WESTERFIELD: Because I --

23 HEARING OFFICER VALKOSKY: Isn't what
24 we're looking at something very similar to an air
25 quality analysis? What is the impact of the plant

1 upon energy resources given the worst case
2 consumption of natural gas. The worst case being
3 8760 hours per year. Why would we have to draw an
4 intermediate line?

5 MR. WESTERFIELD: And I agree with you,
6 I don't think we would.

7 HEARING OFFICER VALKOSKY: Right. And
8 that goes back to my point is that there is no
9 direct -- now, I'm not talking any inferences or
10 implicit, whatever you want to say. There's no
11 direct evidence indicating the impact of the
12 project if it were to run 8760 hours as applicant
13 has requested. That's the point.

14 MR. WESTERFIELD: I agree with you.
15 There is no express statement in the record by any
16 of our witnesses that if it were to run every hour
17 of every year there would be no significant impact
18 on energy resources.

19 But we also maintain this is not a
20 necessary conclusion by the Committee, based upon
21 the evidence in the record. There is substantial
22 evidence in the record that would allow the
23 Committee not to impose a limit; it would allow
24 the Committee -- because there is no need to
25 impose the limit, in our view, because under all

1 the foreseeable uses of this plant, all the
2 foreseeable ways this plant may be operated, we
3 have made the conclusion that there is no
4 significant impact on energy resources.

5 HEARING OFFICER VALKOSKY: But wait a
6 minute, you just contradicted --

7 MR. WESTERFIELD: Simply because we have
8 not analyzed a specific number doesn't mean
9 there's no evidence in the record to support it.

10 HEARING OFFICER VALKOSKY: But you've
11 contradicted yourself. You said under all the
12 conceivable uses, and one of the conceivable uses
13 is to run at 8760 a year.

14 MR. WESTERFIELD: And I shouldn't have
15 said it quite that much. What I meant was all of
16 the foreseeable uses to meet the objectives stated
17 by the applicant --

18 HEARING OFFICER VALKOSKY: Right, and if
19 8760 is not one of those foreseeable uses why is
20 it necessary to preserve that option?

21 Okay, that's -- I don't think we're ever
22 going to agree with that --

23 MR. WESTERFIELD: Okay.

24 HEARING OFFICER VALKOSKY: That's one of
25 the things in the Committee's mind.

1 MR. WESTERFIELD: I understand that's an
2 issue.

3 HEARING OFFICER VALKOSKY: Okay. Mr.
4 Sarvey.

5 MR. SARVEY: Well, first of all I think
6 that the Committee made the right decision. I
7 haven't heard anything here that contradicts the
8 decision that the Committee made. I haven't heard
9 anything new brought up; it's been fully briefed.

10 But just to respond to a couple of
11 things that were said, comparing the Henrietta and
12 Tracy project to this project is just not a good
13 comparison. Number one, the Henrietta project was
14 under the four-month review. The Tracy Peaker was
15 analyzed under the four-month review, but did come
16 out of the four-month review. But the FSA was
17 actually published under the four-month review
18 process, so I don't think they looked as closely
19 as they did on impacts to energy resources as has
20 been done here.

21 And I think it's particularly telling
22 that in the Tracy project we were in the middle of
23 the energy crisis, which we later, you know,
24 there's been a little bit of controversy as to
25 what that energy crisis was caused by, but

1 Commissioner Pernell insisted, and he literally
2 stuck GWF's arm behind them and made them cut
3 their hours back to 6000.

4 So, I mean that was right in the middle
5 of the energy crisis and we cut the project back
6 to 6000 hours because we did have that discussion
7 about energy resources. And that was the response
8 of the community, as well. But I think that's an
9 important distinction to make.

10 And then in response to some of the
11 things that staff said, I don't feel that the
12 project's objectives can override an impact to
13 energy resources. I don't think anybody would
14 suggest that. And as far as the state of the
15 record, staff's only real commitment here is on
16 page 130, and it says, "If the project were
17 proposed to run baseload all the time it's
18 possible that our analysis would say simple cycle
19 is not appropriate as a significant adverse impact
20 on energy resources." And to me that pretty much
21 summarizes what staff's position was.

22 And I haven't heard anything that
23 disproves what was said there, any new evidence or
24 anything. And as far as staff saying that
25 economic incentives would prevent MID from running

1 this project inefficiently, I think it was pointed
2 out by Commissioner Pernell that MID can pass
3 these costs on to the ratepayer. So it's not like
4 a merchant power plant that's constrained and is
5 going to have a bunch of shareholders jumping up
6 and down that they're not running things
7 efficiently. So I think it's a little bit
8 different here in this particular case.

9 And as far as the applicant needing
10 peaking power, the applicant stated in his first
11 brief that even during the energy crisis, the
12 worst part of it, they ran the McClure peaker only
13 91 percent of the time. So they still had another
14 9 percent they could have run that project. So
15 they still have adequate peaking power as far as I
16 can see from the analysis. And like I said, I
17 don't see any new evidence or anything new here
18 that we haven't already fully briefed. And I
19 think the Committee made the right decision.

20 HEARING OFFICER VALKOSKY: Thank you,
21 Mr. Sarvey. There has been a suggestion that the
22 applicant would move to reopen the record today.
23 Would you have any objection to that?

24 MR. SARVEY: Without seeing the evidence
25 that they're proposing, yeah, I would object to

1 it.

2 HEARING OFFICER VALKOSKY: Okay, fine.

3 All right, the Committee would like to
4 consider the matters raised. We'll recess until
5 3:30.

6 (Off the record.)

7 HEARING OFFICER VALKOSKY: -- sure,
8 proceed.

9 MS. WARREN: Okay, I have a few, and
10 then I may pass the microphone on. One thing that
11 I would like to raise that doesn't seem to have
12 been discussed is in the issue of permitting, or
13 the potential that the plant could operate at 8760
14 hours, one of the things I don't think that has
15 been raised is the distinction between it running
16 that way for multiple consecutive years versus one
17 year out of the 1520 in its life cycle when that
18 may be necessary.

19 And I think that goes to your question
20 of why do we have to address the potential that we
21 don't think will ever happen. And it also goes to
22 the question of efficiency versus inefficiency.
23 While operating simple cycle as a continuous
24 baseload may be inefficient, it may not be
25 inefficient or wasteful in the odd event that it

1 runs as a baseload for some period of time as
2 opposed to a continuous multiple year. So that
3 was one distinction that I thought hadn't yet been
4 discussed.

5 The next issue I want to look at was
6 raised on whether there would be a loss of any of
7 the project objectives. And, again, limiting the
8 hours of operation in any particular year would
9 remove the flexibility, and I don't think we need
10 to discuss that more. But, clearly, clearly it
11 does prevent the District from saying, okay,
12 there's a need at the beginning of the year for
13 additional power through emergency, through an
14 outage in another plant, whatever, any of the
15 number of scenarios raised.

16 Were we to choose to run, then, at the
17 beginning of the year it would prevent us from
18 addressing an occurrence that may come up towards
19 the end of the year.

20 I also am concerned in this instance
21 that a limitation could actually result in the
22 District, at least overall, system inefficiency in
23 that as somebody already raised today, the option
24 for supplying peaking power should we run out of
25 operating hours on the new, more efficient plant

1 in Ripon would be to resort to the McClure peaking
2 plant that was raised. A much older plant that
3 obviously would not run quite as efficiently. So,
4 in fact some limitation may lead to inefficiency.

5 I think a couple other issues were
6 raised that with regard to McClure. One, I think
7 Mr. Sarvey just indicated, well, we didn't even
8 run McClure fully during the energy crisis. Well,
9 right. And the reason, I think, and this is
10 somewhere in the documents in the record, the
11 reason for that is that there was a limitation on
12 the number of hours that it could run, so it
13 couldn't respond to the crisis which raised one of
14 our project objectives here.

15 Another issue that Mr. Sarvey raises, he
16 made a statement that the four-month review
17 process cannot be comparable to the SPPE process
18 that's been undergone currently. The applicant
19 disagrees with that. The criteria, the method of
20 analysis are all the same. And so the conclusions
21 would be equally valid.

22 I think the last thing that I just
23 cannot let go without responding to is Mr.
24 Sarvey's comment that, oh, the District can simply
25 pass on these costs to the ratepayers, it doesn't

1 have to be economically efficient because they're
2 not shareholders.

3 Our ratepayers elect our board of
4 directors that set the rates. And for no other
5 reason than that we may be more efficient and more
6 concerned about costs. In addition I think that
7 historically it can be shown that the Modesto
8 Irrigation District has among the lowest rate and
9 maintains among the lowest rates in the state.
10 There's no evidence that that would change simply
11 for the opportunity to run a simple cycle plant
12 inefficiently.

13 I think there were some additional
14 comments. Greg Salyer is our Generation Manager.

15 HEARING OFFICER VALKOSKY: Before we
16 start there, Ms. Warren, what's the limitation on
17 operating hours for McClure?

18 MR. SALYER: Maybe I could address that.

19 HEARING OFFICER VALKOSKY: Fine.

20 MR. SALYER: We have a limitation of --
21 my name's Greg Salyer; I'm Generation Manager for
22 Modesto Irrigation District, responsible for all
23 of our generation facilities including the McClure
24 facility.

25 The operational limitation on that is

1 877 hours. The comment was made about the 91
2 percent of those hours, and the inference was that
3 that's all we needed. That was not the case at
4 all.

5 The fact that we were limited to 877
6 hours we cannot meet a lot of the needs of the
7 state. What we did is once we got down to that
8 last 90 percent we kept that band of operating
9 hours available as an absolute emergency in case
10 all heck broke loose. So that's why we didn't use
11 the full 877. We have to have a little bit of
12 cushion there.

13 We clearly would have run the unit that
14 year a lot more hours if we would have had the
15 permitting capability.

16 I guess I want to make one more point on
17 this discussion of baseload versus peaking. I
18 think one point that gets missed is in a peaking
19 application you can run a very low minimum load
20 point, on an LM6000 you can run down below 10
21 megawatts.

22 On a baseload combined cycle plant your
23 minimum load might be, say, 30 megawatts. So
24 there are times where it gives the District a lot
25 of spinning reserve, versus they're operating at

1 10 megawatts it gives them another, on each unit,
2 another 40 megawatts per unit of spinning reserve
3 that's there at a moment's notice for the state.

4 HEARING OFFICER VALKOSKY: Thank you.

5 MR. RUBENSTEIN: Gary Rubenstein, also
6 on behalf of the applicant, MID.

7 The staff's analysis on this issue was
8 both qualitative and quantitative. If you look at
9 the final initial study on page 6-4 you see a
10 table at the top which represents the only
11 quantitative aspect of the staff's analysis.

12 And that quantitative portion of the
13 analysis looks only at the output of the potential
14 alternative engines and their efficiency on an
15 hourly basis. The quantitative analysis performed
16 by the staff did not involve any assumption about
17 5000 or 3000 or 8000 hours per year of operation.

18 The 5000-hour-per-year number came from
19 the applicant's testimony during hearing in
20 response to a question that was directed at
21 understanding why the applicant had elected to
22 license the plant from an air quality perspective
23 for 8760 hours per year. The 5000-hour number did
24 not come up in the context of the energy resources
25 analysis, and was not relied upon by the staff.

1 As Mr. Westerfield indicated earlier
2 this afternoon, there were many qualitative
3 factors as well as quantitative factors that the
4 staff relied on in their analysis. And I believe
5 that it is those qualitative factors that led to
6 the staff's conclusion that the project would not
7 result in a wasteful use of energy, either
8 operating as a peaking plant or in baseload
9 operations. And I believe that staff conclusion
10 supports the elimination of the proposed 5000-hour
11 limit.

12 HEARING OFFICER VALKOSKY: Thank you.
13 Anything further, Ms. Warren?

14 MS. WARREN: No, thank you very much.

15 HEARING OFFICER VALKOSKY: Mr.
16 Westerfield, any comments before we recess?

17 MR. WESTERFIELD: I don't think so,
18 thank you.

19 HEARING OFFICER VALKOSKY: Mr. Sarvey?

20 MR. SARVEY: I'll save them until after
21 the recess.

22 HEARING OFFICER VALKOSKY: All right,
23 we'll recess for 15 minutes until 3:45.

24 (Brief recess.)

25 HEARING OFFICER VALKOSKY: If we could

1 reconvene, please. Ms. Warren, you mentioned the
2 possibility of reopening the record. Are you, in
3 fact, making a motion to that effect?

4 MS. WARREN: Certainly.

5 (Laughter.)

6 HEARING OFFICER VALKOSKY: Okay. Any
7 comments on the motion, from staff?

8 MR. WESTERFIELD: Of course. Yes, we
9 couldn't let this go without making comment. I
10 don't believe staff would take a position that it
11 objects to reopening the record. In fact, I think
12 it, depending on the thoughts of the Committee,
13 could be the appropriate step to take.

14 We do have a concern, however, that if
15 the Committee is considering opening the record
16 now our concern is whether notice --

17 HEARING OFFICER VALKOSKY: I'm sorry,
18 Mr. Westerfield, I will take the full blame for
19 this. I should have prefaced it that if we do
20 have, if the Committee does reopen, the hearing
21 would occur on December 22nd at 2:00 p.m. in
22 Sacramento. We are not properly noticed for
23 receiving evidence today.

24 MR. WESTERFIELD: I --

25 HEARING OFFICER VALKOSKY: I'm sorry I

1 left out those qualifications. With those
2 qualifications does staff have a reaction?

3 MR. WESTERFIELD: Then we would not
4 object.

5 HEARING OFFICER VALKOSKY: Mr. Sarvey?

6 MR. SARVEY: What would be the scope of
7 reopening this would be my first question.

8 HEARING OFFICER VALKOSKY: The scope
9 would be solely limited to the question of energy
10 resources and gathering substantive information on
11 the matters which were characterized as implied
12 today, and characterized by the Committee as
13 reflecting basically holes in the evidentiary
14 record.

15 MR. SARVEY: And so will all the parties
16 be allowed to present evidence or --

17 HEARING OFFICER VALKOSKY: Of course. I
18 mean it would be a regular evidentiary proceeding
19 with prefiled testimony, yeah.

20 MR. SARVEY: Okay. I would have no
21 objection to that.

22 PRESIDING MEMBER BOYD: Let me put on
23 the record some of the concerns that we have here,
24 of why we're amenable to hearing an issue. I, for
25 one, can't agree with the argument that's been

1 made that absent some discussion that there was
2 some negative consequence from 8760 in the record
3 that that should be allowed. Because from my
4 perspective the record is -- and the whole hearing
5 process has been so centered on a peaker with
6 maybe three months of baseload operation.

7 In fact, we spent time in this room
8 having quite a discussion of the economics of
9 peakers versus combined cycles and how, of course,
10 nobody would be suggesting a peaker if what they
11 really wanted was a baseload plant, a plant to run
12 8760.

13 So we got back to the case in point,
14 which is, you know, we only want a peaker for all
15 the reasons that have been recited again today;
16 the flexibility, et cetera, et cetera. And we had
17 pretty well concurred with that as a result of our
18 decision.

19 However, I think there's a huge void, I
20 think we all do, that there's a void in the record
21 that makes enough of a case for reconsidering the
22 idea that there should be an open-ended license
23 for, so to speak, 8760. And so that record needs
24 to be made.

25 And while there's been some interesting

1 discussion today, it doesn't fill the hole that's
2 there as far as we're concerned. Therefore, we
3 agree with the applicant that we will have to have
4 a hearing on the subject. And that case will have
5 to be made so that we can decide the issue.

6 HEARING OFFICER VALKOSKY: Is there
7 anything further?

8 MR. WESTERFIELD: Again, what would be
9 the proposed dates of such a hearing?

10 HEARING OFFICER VALKOSKY: The date
11 would be -- the earliest available date is
12 December 22nd, 2:00 p.m. in Sacramento.

13 PRESIDING MEMBER BOYD: Apologize for
14 that, but that just happens to be a fact of
15 calendar. I mean we heard the ten days, but you
16 can't get either of us before the 22nd of December
17 unfortunately. The "Grinch" stole December, too,
18 so.

19 MR. WESTERFIELD: One concern I have is
20 my witness on energy resources just informed me
21 he's on vacation from December 20th. Would it be
22 possible to do it December 17th, the date of the
23 business meeting?

24 PRESIDING MEMBER BOYD: This
25 Commissioner won't be able to even make the

1 business meeting.

2 MR. WESTERFIELD: I see. Well, could we
3 possibly just --

4 PRESIDING MEMBER BOYD: Look for another
5 date. That date was, correct me if I'm wrong,
6 that was just the earliest.

7 HEARING OFFICER VALKOSKY: That was the
8 earliest, yes, that's correct.

9 PRESIDING MEMBER BOYD: And I think
10 Christmas Eve is out of the question, as well.

11 MR. WESTERFIELD: Could we get back to
12 the Committee on this

13 PRESIDING MEMBER BOYD: Certainly.

14 MR. WESTERFIELD: Perhaps it will work
15 out, but just like to consult with the witness,
16 again, just to make sure.

17 HEARING OFFICER VALKOSKY: All right,
18 Mr. Westerfield, if you'd do that, make sure, I'd
19 love to see a date that is mutually agreeable with
20 you and Mr. Sarvey and MID.

21 MR. WESTERFIELD: I'll take
22 responsibility for that.

23 HEARING OFFICER VALKOSKY: Okay. And if
24 you could let me know no later than Thursday so a
25 notice can go out.

1 MR. WESTERFIELD: That'd be fine.

2 HEARING OFFICER VALKOSKY: Okay. And,
3 again, I guess I would just caution, be mindful of
4 the holidays.

5 MS. WARREN: Can I -- two suggestions I
6 just wanted to make. One is to explore the
7 possibility, if we could, obviously applicant
8 would greatly appreciate keeping as early a date
9 as possible, but so if we could explore the
10 possibility of having the witness available by
11 telephone, if not in the room. And also whether
12 it would be possible to enter his testimony by
13 stipulation. Just a couple suggestions to look
14 into to maybe keep the early date available.

15 The other question I had was to explore
16 just briefly, if we can, what timeline we're
17 looking at after the evidentiary hearing to keep
18 the process moving.

19 HEARING OFFICER VALKOSKY: Okay,
20 presuming we had the hearing on the 22nd, and
21 again that's the only date we really talked about,
22 frankly, nothing will happen during the balance of
23 the year, given Christmas and New Years.

24 I would anticipate perhaps probably mid-
25 January if the evidence warranted there would be a

1 reissued proposed decision. That's just a rough
2 guess.

3 As far as stipulating, since you
4 mentioned it, off the top of my head I think that
5 causes problems unless it's -- potential problems
6 unless it's a three-way stipulation, because I'm
7 sure that Mr. Sarvey would like to conduct cross-
8 examination even if the Committee has no
9 questions. And that's certainly his right.

10 MS. WARREN: Understood.

11 HEARING OFFICER VALKOSKY: Okay.

12 MS. WARREN: So then, if I'm clear,
13 Bill, you're going to work with everyone to try to
14 come to a date. That date will be forwarded to
15 the Hearing Officer. And then, Mr. Valkosky,
16 you'll issue some sort of statement or decision
17 notice that will give us the date, time, as well
18 as the --

19 HEARING OFFICER VALKOSKY: I will --

20 MS. WARREN: -- limited scope?

21 HEARING OFFICER VALKOSKY: -- actually
22 what I'd prefer is a choice of dates because,
23 frankly, I'm unsure of the Commissioners'
24 schedule, except for the 22nd. So that has to be
25 compatible with Commissioner Boyd's schedule.

1 That's why --

2 PRESIDING MEMBER BOYD: The 23rd works,
3 too.

4 MS. WARREN: And the notice will
5 indicate the limited scope, also?

6 HEARING OFFICER VALKOSKY: That's
7 correct. And I think, you know, just interpret it
8 as providing substance to some of the arguments in
9 the inference as we've heard voiced today.

10 And I hope it goes without saying
11 obviously we'll --

12 MR. WESTERFIELD: Mr. Valkosky.

13 HEARING OFFICER VALKOSKY: -- just one
14 second --

15 MR. WESTERFIELD: I'm sorry.

16 HEARING OFFICER VALKOSKY: -- we'll pull
17 this item from the business meeting for the 17th.
18 Yeah, Mr. Westerfield.

19 MR. WESTERFIELD: I'm sorry. Mr. Baker
20 has just decided to give MID a Christmas present,
21 and come in from his vacation on the afternoon of
22 the 22nd. So, he's available, and so we wouldn't
23 have any objection to having it go forward on the
24 22nd.

25 HEARING OFFICER VALKOSKY: Okay. Mr.

1 Sarvey, does that date work for you?

2 MR. SARVEY: I'll have to check with my
3 boss, but it's possible, yeah. I'll get back to
4 Mr. Westerfield here tomorrow and let him know. I
5 think it'll be all right.

6 HEARING OFFICER VALKOSKY: Yeah, if you
7 could let him know no later than tomorrow, because
8 I would like to get the notice and the filing
9 dates for testimony out as soon as possible in
10 deference to everyone and the holiday season.

11 Okay, any further matters?

12 Seeing no further matters, thank you for
13 your participation. We'll see you on the 22nd in
14 Sacramento. We're adjourned.

15 (Whereupon, at 4:09 p.m., the Committee
16 Conference was adjourned, to reconvene
17 Monday, December 22, 2003 at the
18 California Energy Commission, 1516 Ninth
19 Street, Sacramento, California.)

20 --o0o--

21

22

23

24

25

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Committee Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 10th day of December, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345